

STATE OF WISCONSIN
CIRCUIT COURT BRANCH 37
MILWAUKEE COUNTY

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION,

Petitioner,
v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Case No. 96-CV-007348

[WERC is using the following electronic file name: 96-7348C1.doc]

[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

NOTICE OF ENTRY OF FINAL DECISION

PLEASE TAKE NOTICE that a final decision granting the Commission's motion to quash the alternative writ of certiorari, and dismissing the petition for certiorari, of which a true and correct copy is hereto attached, was signed by the court, and duly entered in the Circuit Court for Milwaukee County, Wisconsin, on the 17th day of February, 1997.

Notice of entry of this final decision is being given pursuant to secs. 806.06(5) and 808.04(1), Stats.

Dated this 26th day of February, 1997.

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DECISION

Respondent Wisconsin Employment Relations Commission (WERC) brings this motion to quash petitioner Milwaukee Deputy Sheriffs' Association's writ of certiorari. The parties have submitted letter briefs in support of their respective positions. This action arises from a dispute regarding the reclassification of certain deputy sheriff positions. The dispute was submitted to an arbitrator pursuant to a provision in the pertinent collective bargaining agreement.

The Sheriffs' Association requests that this court review the decision of the arbitrator, asserting that the arbitrator made his decision based on an incorrect theory of law, or that it was arbitrary, oppressive or unreasonable, or that it represented the arbitrator's rule and not his judgment.

WERC argues in its motion to quash that the Association must seek review of the arbitrator's award under Chapter 788, Stats., and cannot seek review by certiorari pursuant to Chapter 227. WERC argues that the arbitrator's decision is not a decision or order of the

commission and that WERC is therefore not a proper respondent. WERC appears to argue that if one of the parties had asked WERC to review the arbitrator's decision, the WERC decision would then be subject to judicial review under Chapter 227.

In response, the Sheriff's Association argues that Chapter 788 does not preclude review of an arbitrator's decision by writ of certiorari. The Sheriffs' Association specifies that it "is not asking the WERC to review the arbitrator's decision; rather, the Association is asking this court to review that decision pursuant to certiorari." The Sheriffs' Association argues that the court should note that allowing its writ to be quashed may leave the Sheriffs' Association and its affected members without a remedy, pursuant to § 788.13, Stats. However, the Sheriffs' Association then argues that there is doubt as to whether § 788.13 is meant to be a statute of limitations. The Sheriffs' Association argues that WERC has failed to demonstrate that certiorari is not a remedy available to the Association, and that the motion must therefore be denied.

Certiorari is defined by Black's Law Dictionary thus:

To be informed of. A writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein. The writ is issued in order that the court issuing the writ may inspect the proceedings and determine whether there have been any irregularities.

The Sheriffs' Association, according to paragraph 12 of its petition, appears to be seeking review under the standard of review to be applied to decisions of boards of review and commissions: The Court's review is limited to determining:

- (1) whether the commission kept within its jurisdiction;
- (2) whether it acted according to law;
- (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and

(4) whether the evidence was such that it might reasonably make the order or determination in question.

State ex re. Saenz v. Husz, 198 Wis. 2d 72, 76 (Ct. App. 1995); see also City of West Bend v. Continental IV Fund, 193 Wis. 2d 481, 485 (Ct. App. 1995) (same standard for boards of review).

Here, however, there is no decision made by the commission or by a board of review from which to appeal. The decision at issue is the decision by an arbitrator; this is analogous to the decision of an administrative law judge which is appealed to the pertinent Commission, for example, WERC or the Labor and Industry Review Commission, and then to the Circuit Court. Therefore, this standard of review is not proper on review of a decision made by an arbitrator. Additionally, Chapter 227 discusses review of "agency" determinations. Section 227.01(1) defines "agency" as "a board, commission, committee, department or officer in the state government, except the governor, a district attorney or a military or judicial officer." The arbitrator in this case does not fit this definition; therefore, any remedy under Chapter 227, for example under § 227.57, does not apply in this case.

This does not mean, however, that the Sheriffs' Association is precluded from seeking review of the arbitrator's determination. The procedure is outlined in Chapter 788: Any party may apply to the appropriate circuit court within one year after the arbitrator's award for an order confirming the award, and the court must grant the order unless the award is vacated, modified or corrected under § 788.10 or § 788.11. Section 788.09. Section 788.10 and 788.11 specify when a court may vacate, modify or correct the arbitrator's award. "The WERC does not have the power to review arbitration awards. Sec. 298.01 provides for court review of arbitration awards." [Chapter 298 was renumbered as Chapter 788 in Laws of 1979, Ch. 32, § 64.] WERC v. Teamsters Local No. 563, 75 Wis.2d 602, 609 (1977). See also

Madison Metropolitan School District v. WERC, 86 Wis.2d 249, 257 (Ct. App. 1978).

Chapter 788 specifies that the circuit court reviews an arbitrator's decision when one party asks the court to confirm an arbitrator's award and the other party seeks to vacate, modify or correct the award. A party may also move to vacate, modify or correct an award, even if no party has moved for an order confirming the award, pursuant to § 788.13. However, that statute specifies that such a motion "must be served upon the adverse party or attorney within 3 months after the award is filed or delivered." The Sheriffs' Association admits that it did not so move within that time limit. That time limit does not apply when "a party who prevails at an arbitration decides to move to confirm the award and the adverse party desires to raise objections by responding with a motion to vacate, modify or correct the award" pursuant to §§ 788.10 and 788.11. Milwaukee Police Assoc. v. City of Milwaukee, 92 Wis.2d 145, 165 (1979).

However, in this case, the "prevailing party" was the Milwaukee County Sheriff's Department because the arbitrator held that the deputy sheriff (Jose Diaz) complaining about the deputy reclassification was not covered by the contract at issue. Therefore, there was no real "award" for which the prevailing party could have sought judicial enforcement. Therefore, the Sheriffs' Association's only means of moving to vacate, modify or correct the arbitrator's decision is pursuant to § 788.13 and had to have been served within 3 months after the award was filed or delivered. Although the Sheriffs' Association asks the court to note that this would leave the affected deputy sheriff or deputy sheriffs without a remedy, this court also notes that all similar statutes of limitations or other statutes requiring action to be taken within a certain time can preclude a party from acting if the deadline is missed. Having missed its opportunity

to move to vacate, modify or correct the arbitrator's decision, the Sheriffs' Association is deemed to have waived that opportunity and is not entitled to have the arbitrator's decision reviewed.

IT IS HEREBY ORDERED, based on the foregoing, that WERC's motion to quash the alternative writ of certiorari is granted, and the petition for certiorari is dismissed.

Dated at Milwaukee, Wisconsin, this 17th day of February, 1997.

BY THE COURT:

Arlene D. Connors /s/

Hon. Arlene D. Connors
Circuit Court Judge, Br. 37